LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
JAN 28 1974
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

CASE NO. 73-728

CITY OF MIAMI, a Municipal corporation,
Petitioner,

vs.

DAVID SPICY,
Respondent.

PETITION FOR REHEARING

JOHN S. LLOYD,
City Attorney
MONTAGUE ROSENBERG,
Asst. City Attorney
Attorneys for Petitioner,
CITY OF MIAMI
65 S. W. First Street
Miami, Florida 33130

MIAMI REVIEW — 371-4853 — 377-3721

In the Supreme Court of the United States

CASE NO. 73-728

CITY OF MIAMI, a Municipal corporation,
Petitioner,

vs.

DAVID SPICY,
Respondent.

PETITION FOR REHEARING

The CITY OF MIAMI, Petitioner herein, files this its Petition for Rehearing on the following grounds:

1. This Court has inadvertently overlooked the fact that the Florida Supreme Court has denied it due process of law and equal protection of the law guaranteed to it by the United States Constitution by its decision denying rehearing holding the City of Miami legally liable for the tort of a third party, i.e. a Dade County hospital facility

which is a separate entity and in no wise connected with the City of Miami.

2. The Court has inadvertently overlooked the fact that the denial of certiorari herein deprives the City of Miami of property without due process of law.

3. This Court has inadvertently overlooked that fact, and expressly overruled without mentioning it, its decision in *Pierson v. Ray*, 386 U.S. 549, 18 L.Ed. 2d 288, 87 S.Ct. 1213, holding that good faith and probable cause is a defense available to the City of Miami herein.

4. This Court has inadvertently overlooked the respected Federal holding summarized in *Hill v. Rowlin*, 474 F. 2d 1374, holding that the test for making an arrest without a warrant is the subjective test of the reasonable good faith of the arresting officer.

5. This Court has inadvertently overlooked that the arresting officer exercised his judgment in good faith and under *Miami v. Albro*, 120 So. 2d 23, and *Pierson v. Ray*, supra, the City of Miami is immune from liability in the instant cause.

6. This Court has inadvertently overlooked the fact that it has reversed without mentioning it, *Cambist Films, Inc. v. Duggan*, 475 F. 2d 887, where the Court held:

> "Police officers are not expected to have a complete knowledge of the intricacies of case law rather they are only expected to act in accordance with the facts and circumstances of the given situation with which they are confronted."

7. This Court has inadvertently overlooked the fact that its denial of certiorari expressly overrules without mentioning it *Pierson v. Ray*, supra.

WHEREFORE, your Petitioner prays for a rehearing herein and to grant it oral argument thereon.

JOHN S. LLOYD,
City Attorney
MONTAGUE ROSENBERG,
Asst. City Attorney
Attorneys for Petitioner,
CITY OF MIAMI
65 S. W. First Street
Miami, Florida 33130

By /s/ Montague Rosenberg

Montague Rosenberg,
Asst. City Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Rehearing was mailed to THEODORE M. TRUSHIN LAW OFFICES, Attorney for Respondent, 420 Lincoln Road, Miami Beach, Florida 33139, this 15th day of January, 1974.

By /s/ Montague Rosenberg

Montague Rosenberg
Assistant City Attorney